

I trust that all sectional feelings and prejudices will be discarded from your councils, and that every measure will be examined and acted upon solely with reference to its merits, and the effect it may have upon the interest of the State at large.

Our present condition is a most prosperous one, immigration and wealth are pouring into the State more rapidly than at any former period. A spirit of enterprise and improvement is now abroad among our people, which if judiciously fostered and encouraged, will at no distant period enable Texas to occupy that position among her sister States to which she is entitled from her extent of territory and great natural resources.

It is my sincere desire that you may be able hereafter to reflect that your labors have contributed much to elevate the moral, social, and political condition of the State.

December 23, 1853.

E. M. PEASE.

Mr. Potter offered the following resolution :

Resolved, That such portion of the Governor's message as refers to education, be referred to the committee on Education ; such as refers to changes of laws, to the committee on the Judiciary ; such as refers to Internal Improvements, to the committee on that subject ; such as refers to Indian affairs, to the committee on that subject ; such as refers to public debt, to the committee on Public Debt ; such as refers to public lands, to the committee on Public Lands ; such as appertains to a geological survey, &c., to the committee on State Affairs.

On motion of Mr. Gage, the Senate adjourned until Tuesday, 27th inst., at 10 o'clock, A. M.

FRIDAY, December 27, 1853.

The Senate met pursuant to adjournment—roll called—quorum present.

The Journal of Friday was read and adopted.

PETITIONS.

Mr. Armstrong presented the petition of the heirs of John H. Connell, dec'd, asking for land ; referred to the committee on Private Land Claims.

Mr. Potter presented the petition of James P. Nash and of Ma-

ry Chenoworth; referred to the committee on Private Land Claims.

Mr. Paschal presented the petition of Anthony Deffenbaugh; referred to the committee on Private Land Claims.

Mr. Paschal presented the petition of A. J. McClelland, Administrator of Joseph McClelland and Bryan Callaghan; referred to the committee on Claims and Accounts.

Mr. Paschal also presented the petition of the citizens of Castroville, asking the passage of an act to change the name of Castroville to that of Medina city; referred to the committee on Counties and County Boundaries.

Mr. Scott presented the petition of Fairfax Washington, administrator of the estate of John Mann; referred to the committee on Public Debt.

Mr. Whitaker presented the memorial of sundry citizens of Nacogdoches county, asking the passage of a law that shall permit the citizens of each county to protect themselves by prohibiting the sale of spirituous-liquors within its limits; referred to the committee on State Affairs.

Mr. Allen presented the petition of William Burkett; referred to the committee on Private Land Claims.

Mr. Allen presented the petition of J. M. Goffe and others; referred to the committee on Internal Improvements.

Mr. Allen also presented the petition of S. H. Dill and accompanying documents; referred to the committee on Claims and Accounts.

Mr. Millican presented the petition of David W. Campbell; referred to the committee on Private Land Claims.

Mr. Edwards presented the petition of A. E. Baker; referred to the committee on Public Debt.

Mr. Durst presented the petition of Jack R. Everett; referred to the committee on Public Debt.

Mr. Potter, chairman of the committee on the Judiciary, to whom was referred a bill the better to secure costs in the Supreme Court in certain cases, reported the same back to the Senate and recommended its passage.

Mr. Potter, chairman of the committee on the Judiciary, to whom was referred the petition of William D. Dillon, reported the following bill, and recommended its passage.

A bill authorising William D. Dillon to practice law; read first time.

Mr. Paschal made the following report :

COMMITTEE ROOM, Dec. 26, 1853.

Hon. D. C. DICKSON,

President of the Senate :

SIR: The Select committee, to whom was referred the memorial and accompanying vouchers of the heirs of Benjamin R. Milam, to the Legislature of Texas, praying relief, have had the same under consideration, and I am instructed by a majority of the committee to report the accompanying bill for the relief of said heirs, and to recommend its passage.

Your committee find, by reference to an act of the Republic of Texas, approved January 14th, 1839, that the board of land commissioners of Washington county were required to issue to Robert M. Williamson, agent of Benjamin R. Milam, ten certificates for a league and labor of land each, making in all ten leagues and ten labors of land; which the said Williamson, his heirs, or assigns, were fully authorised and empowered to locate and have surveyed, upon any vacant and unoccupied lands of this Republic, as pointed out and prescribed by the land law. The second section of the act made it the duty of the Commissioner of the General Land Office to issue patents to said Williamson, his heirs, or assigns, upon said certificates; *provided*, that said Williamson shall accept the same in full satisfaction of all the claims that he may have on the government as agent of Benjamin R. Milam.

Your committee are fully satisfied that Benjamin R. Milam was killed at the storming of Bexar, in the year 1835, and that Robert M. Williamson was not authorised, nor did he purport to act in behalf of the heirs of said Milam on the 14th January, 1839, when the above mentioned act was passed.

It is useless for your committee to say, that he could have had no power to act as agent of one who had been dead more than three years. The act was a full recognition on the part of the government that Benjamin R. Milam was entitled to receive ten leagues and ten labors of land of the Republic. It is presumed this act was in accordance with the proof made at the time, and it was certainly binding upon the government, being an acknowledgement of a just claim, even if it were not binding upon the heirs of Milam, who were not legally represented. Had the act merely authorised the grant of ten leagues and ten labors of land to B. R. Milam, or his heirs, in full satisfaction of all claims of said Milam upon the government for services, it is believed that no necessity would now exist for an act of relief; but Congress went further, and constituted an agent to receive these

lands in trust for B. R. Milam, and authorised the patents to issue *to the agent, his heirs, or assigns.*

It appears that the certificates were regularly issued by the board of land commissioners of Washington county, to said Robert M. Williamson, according to an act approved January 14th, 1839. These certificates have been transferred by R. M. Williamson, and patents have been issued in the names of the assignees.

In the act referred to there appears to be an implied authorization to the agent to transfer the certificates; at least, such was the construction placed upon the act by the agent and the Commissioner of the General Land Office; and those certificates were transferred without the consent or knowledge of the heirs of B. R. Milam; nor is there anything appearing to your committee showing they have ever sanctioned the transfer, or received one dollar of benefit from the grant. On the contrary, there is a solemn affidavit of the claimants that R. M. Williamson was not authorised to act as their agent, and that they never did receive any benefit from the grant.

Neither in law nor justice had the government the right to authorise the sale of the certificates to the prejudice of the heirs of the grantee; and having granted to Williamson the authority to locate, survey, and to receive patents to himself, his heirs, or assigns, upon every principle of law and justice the government is bound for the acts of the agent.

Your committee hold that the government should be bound for its acts in the same manner as an individual. It is a clear principle of law, that if A be indebted to C, and for the purpose of paying the debt should convey land, or deliver money to D, in trust for C, without the knowledge or consent of the latter, such conveyance or delivery would be no payment of the debt.

If we apply this principle to the case before us, it appears that the delivery of the certificates to Williamson, without the knowledge or consent of the heirs of Milam, did not satisfy the debt acknowledged by the government to B. R. Milam. If it be said that under the act R. M. Williamson had not authority to convey the title to these lands, and that the heirs may now sue for and recover them, your committee believe that the government, by its own act, has no right to impose the burden of several suits upon the heirs. As the certificates were issued to the agent by the act of the government, it is proper the government should undertake their recovery or cancellation.

Viewing the subject in this light, your committee have not examined the question of the original claim of Benjamin R. Milam

upon the government for lands, believing that the State is bound by the act of 1839, and that in justice it should now issue certificates to the claimants for ten leagues and ten labors of land, upon the heirs of Benjamin R. Milam, through their legally authorised agent, filing with the Commissioner of the General Land Office a full and entire release and acquittance for all claims against the State of Texas, on account of the services and losses of the said Benjamin R. Milam, and upon their renouncing in favor of the State all right, title and interest, which the heirs of said Milam may have in and to the lands granted in pursuance of said act of the 14th January, A. D. 1839.

From the vouchers accompanying the petition, your committee are well satisfied that the claimants are the only legal heirs of the late Benjamin R. Milam, and that James Milam is legally authorised to act as the agent of said heirs.

The committee have also instructed me to report the accompanying resolution to the Senate, and to recommend its adoption.

All of which is respectfully reported.

I. A. PASCHAL,

Ch'n Select Committee.

A bill for the relief of the heirs of B. R. Milam; read first time.

Mr. Paschal, on behalf of the Select committee, offered the following resolution:

Resolved, That the Judiciary committee be instructed to investigate whether ten certificates for a league and labor of land each, issued to R. M. Williamson by the board of land commissioners of Washington county, in pursuance of an act of Congress of the late Republic of Texas, have been legally sold by said Williamson, or whether the title to said certificates and lands surveyed and patented by virtue thereof, is now vested in the heirs of B. R. Milam; and if so, that said committee be instructed to report a bill authorising the Attorney General to sue for and recover, in the name and for the use of the State, the lands surveyed and patented by virtue of said certificates.

Mr. Potter moved to amend the resolution by striking out "Judiciary committee," and inserting "Select committee to which was referred the petition of B. R. Milam." Lost; and resolution adopted.

Mr. Sublett, chairman of the committee on Enrolled Bills, made the following report:

The committee upon Enrolled Bills have examined an act supplementary to an act entitled an act authorising the Commissioner of the General Land Office to appoint additional draughts-

men and assistant clerks in his department, and to fix the salaries of the commissioner and all under his control; and, also, a bill entitled an act making appropriation for the per diem pay and mileage of the members of the fifth Legislature, and the per diem pay of the officers of the same; which said bills they found correctly enrolled, and presented the same on the 23d inst. to the Governor for his approval.

Mr. Allen introduced a bill to incorporate the Texas Steamship company; read first time.

Mr. Allen moved to suspend the rule requiring bills to be read on three several days, that the bill might be read a second time and referred. Lost.

Mr. Newman introduced a bill to establish a subordinate land office in Eastern Texas; read first time.

Mr. Paschal introduced a bill to incorporate the Western Texas Insurance company; read first time.

Mr. Durst introduced a joint resolution requesting and authorizing our Senators and Representatives in Congress to make arrangements with the government of the United States and the creditors of Texas, relating to the reserved five millions, &c.; read first time.

Mr. Paschal introduced a bill to incorporate the Chocolate Bridge company; read first time.

Mr. Edwards offered the following resolution:

Resolved, That one thousand copies of the Governor's Message be printed for the use of the Senate.

Mr. Kyle moved to amend the resolution by adding: "And 250 copies in the German language."

Mr. Paschal moved to amend the amendment, by adding: "And 250 copies in the Spanish language." Carried; and resolution as amended was adopted.

Mr. Wren introduced a bill to recognize the command of Capt. Wesley Atkins in the year 1836; read first time.

Mr. Potter introduced a bill to promote internal improvements, by carrying out the contract with Frederick Dawson; read first time.

On motion of Mr. Armstrong, a bill concerning writs of error was taken from the table and placed among the orders of the day.

On motion of Mr. Sublett, the Senate adjourned until 10 o'clock to-morrow morning.